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# County of San Diego

## CITIZENS' LAW ENFORCEMENT REVIEW BOARD

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The Citizens' Law Enforcement Review Board made the following findings in the closed session portion of its January 13, 2009 meeting, held at the San Diego County Administration Center, 1600 Pacific Highway, Room 302/303, San Diego, CA 92101. Minutes of the open session portion of this meeting will be available following the Review Board's review and adoption of the minutes at its next meeting. Meeting agendas, minutes, and other information about the Review Board are available upon request or at [www.sdcountry.ca.gov/clerb](http://www.sdcountry.ca.gov/clerb).

**CLOSED SESSION**

- a) **Discussion & Consideration of Complaints & Reports:** Pursuant to Government Code Section 54957 to hear complaints or charges brought against Sheriff or Probation employees by a citizen (unless the employee requests a public session).

DEFINITION OF FINDINGS	
Sustained	The evidence supports the allegation and the act or conduct was not justified.
Not Sustained	There was <u>insufficient evidence</u> to either prove or disprove the allegation.
Action Justified	The evidence shows the alleged act or conduct did occur but was lawful, justified and proper.
Unfounded	The evidence shows that the alleged act or conduct did not occur.
Summary Dismissal	The Review Board lacks jurisdiction or the complaint clearly lacks merit.

### CASES FOR SUMMARY HEARING (7)

**ALLEGATIONS, FINDINGS & RATIONALE****06-102**

1. Death Investigation/Officer Involved Shooting – Deputies 1 and 2 fired on the decedent, who was fatally wounded by a law enforcement officer from another agency, after he drove at them with his vehicle.

Finding: Action Justified

Rationale: Deputies 1 and 2 participated in a pursuit and used deadly force in accordance with Department policies. The evidence showed their conduct was lawful, justified and proper.

**07-135**

1. Misconduct/Procedure – Unidentified staff failed to properly classify and/or house the complainant, who was injured.

Finding: Sustained

Rationale: Medical staff recommended a lower tier and lower bunk because of the complainant's prosthetic leg.

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A classification deputy recommended a medical floor. A housing deputy assigned the complainant to an upper tier and bunk and stated he was never made aware of the need for a lower tier and bunk. According to the Department, there was a “disconnect” between medical and sworn staff. The evidence supports a violation of Sheriff’s Policy and Procedure, M.39 Disabled Inmates, and the act or conduct was not justified.

2. Misconduct/Procedure – Unidentified staff failed to assist the complainant with his complaint.

Finding: Not Sustained

Rationale: According to Sheriff’s records, there is no record of any Inmate Grievances filed by the complainant. Both the Sheriff and County Claims departments denied receiving any claims from the complainant. In the absence of information from the complainant, there is no way to identify involved personnel or investigate further. There is insufficient evidence to prove or disprove the allegation.

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## **08-008**

1. Misconduct/Procedure – Deputy 1 failed to take action to an ongoing problem the complainant had with his neighbors.

Finding: Summary Dismissal

Rationale: The complainant failed to provide his current contact information, which is a requirement he agreed to when he filed the complaint. Without contact and cooperation from the complainant, CLERB staff was unable to investigate the complaint.

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## **08-011**

1. Excessive Force – Deputy 2 tasered the complainant repeatedly as he stood with his hands up.

Finding: Action Justified

Rationale: Deputies 1, 2, and 4 responded to investigate a report of a domestic violence restraining order violation. Deputy 2, who is taser trained, confronted the complainant and ordered him to raise his hands. The complainant refused and reportedly began to act agitated, aggressive and paranoid. As the complainant stepped toward Deputy 2, 2 feared being attacked and deployed his taser, which fired but malfunctioned. The complainant then charged toward Deputy 2 and tackled him as Deputy 2 again attempted to deploy the taser, again with no effect. The complainant struck Deputy 2 on his chest, arms, back and head. Deputy 4 used her baton on the complainant, who was distracted enough to allow Deputy 2 to “drive-stun” the complainant on at least three separate contacts. The complainant reportedly kicked, yelled, and actively resisted throughout the incident. All of the deputies’ actions were lawful, justified and proper.

2. Excessive Force - Deputies 1, 2 and/or 4 punched and clubbed the complainant as he lay unconscious.

Finding: Action Justified

Rationale: Deputies used hands-on control and intermediate weapons in response to the complainant’s assaultive behavior. During the fracas described above, there was no report of loss of consciousness by the complainant. However, after the complainant was restrained, deputies observed the complainant acting as though he were unconscious and experiencing a seizure. The complainant was medically evaluated and cleared. The deputies’ actions were lawful, justified and proper.

3. Illegal Search & Seizure - Deputies 1, 2 and/or 4 barged into a residence pushing the homeowner aside.

Finding: Action Justified

Rationale: The homeowner, the protected party in a domestic violence restraining order, opened a screen door and told deputies to “come in” after Deputy 2 knocked on a doorframe. Deputies then requested to search the residence for the safety of deputies and the protected party. After a lapse of time and cooperation, Deputy 2

forced entry into a bedroom. A legal search and seizure was conducted incident to the complainant's arrest for a felony warrant #SCE268826 and violation of valid restraining order # EV11473. Permission was granted by the homeowner, and the deputies' actions were lawful, justified and proper.

4. Excessive Force – Deputies 1, 2 and/or 4 forcefully slapped handcuffs on the complainant resulting in a lump to the wrist bone.

Finding: Action Justified

Rationale: The complainant actively resisted deputies' efforts to control and place him into custody. All prisoners are handcuffed when arrested and transported to a detention facility. After the complainant was handcuffed, he attempted to kick deputies until placed into maximum restraints. Medical records did not corroborate a wrist lump. The deputies' actions were lawful, justified and proper.

5. Illegal Search & Seizure – Deputy 3 detained the handcuffed complainant in the back of a patrol vehicle for 5-10-minutes for no reason.

Finding: Action Justified

Rationale: Deputies had responded to the same address for the complainant's recent restraining order violations, in which the complainant violently resisted arrest and injured a deputy. They were dispatched in this instance because the complainant again was seen arriving at the home of the protected person. The complainant was uncooperative with deputies and evaded them before he submitted to a brief investigatory detention. Deputies handcuffed the complainant and placed him in a patrol car to prevent flight and for the safety of the protected person and themselves. When deputies discovered the restraining order was no longer in effect, they released the complainant. The evidence showed their actions were lawful, justified, and proper.

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## **08-017**

1. Misconduct/Procedure – Deputy 1 responded inappropriately to the complainant's call for assistance regarding kids trespassing on adjacent private property.

Finding: Action Justified

Rationale: Although Deputy 1 saw kids riding bicycles on private property that was posted with "no trespassing" signs, there was no "trespass letter" on file from the property owner asking and authorizing deputies to enforce trespass laws on the property in the owner's absence. Attempts to reach the property owner were unsuccessful. Deputy 1 spoke to parents, who said they told their children to stay away from the complainant's home. Deputy 1's actions were lawful, justified, and proper.

2. Misconduct/Procedure – Deputy 1 responded inappropriately to the complainant's call for assistance regarding a neighbor's threatening behavior.

Finding: Not Sustained

Rationale: Although CAD records show the incident originated as a disturbance call in which the complainant called to report a male and two females at her residence and that she would wait to confront them until deputies arrived, Deputy 1 did not recall the complainant telling him or Deputy 2 about a neighbor threatening her about reporting the juveniles. Attempts to reach the complainant for details on the alleged threat were unsuccessful. According to the deputies, no threats were brought to their attention and no action was taken. There was insufficient evidence to either prove or disprove the allegation.

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## **08-020**

1. Misconduct/Discourtesy – Deputy 1 told the complainant, "He is staring at our dicks."

Finding: Unfounded

Rationale: Deputy 1 denied making this statement, and Deputy 2 denied hearing Deputy 1 make this statement. Consideration of all the evidence, including investigation of the complainant's statements to deputies, showed that the complainant's statements were unreliable. The evidence showed the allegation did not occur.

2. Misconduct/Discourtesy – Deputy 2 yelled at the complainant and called him “a liar.”

Finding: Unfounded

Rationale: Deputy 2 denied yelling at the complainant or calling him a liar, and Deputy 1 denied hearing Deputy 2 yell or make the statement. Consideration of all the evidence, including investigation of the complainant's statements to deputies, showed that the complainant's statements were unreliable. The evidence showed that the allegation did not occur.

3. Misconduct/Intimidation – Deputy 2 falsely accused the complainant of having a criminal record.

Finding: Action Justified

Rationale: The complainant has a criminal record. Because the complainant also has an active restraining order, Deputy 2 asked him about a domestic violence arrest but did not pursue the matter after he denied being arrested. Deputy 2's actions were lawful, justified and proper.

4. Illegal Search & Seizure - Deputies 1 and 2 illegally detained the complainant.

Finding: Action Justified

Rationale: Deputy 1 hailed the complainant and asked to talk to him in a public place but did not force the complainant to talk to him, physically restrain him, or significantly delay him in questioning him. In response to the complainant's questions, both deputies repeatedly told him he was free to walk away from the brief consensual encounter. Their actions were lawful, justified, and proper.

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## **08-061**

1. Misconduct/Procedure - Probation Officer 1 acted inappropriately by telling a third party, who was involved in a dispute with the complainant, that the complainant would be at the Probation office for an appointment.

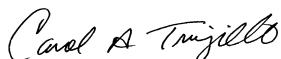
Finding: Not Sustained

Rationale: Probation Officer 1 denied the allegation. The third party did not contact CLERB as requested. There was insufficient evidence to prove or disprove the allegation.

2. Misconduct/Harassment - Probation Officer 1 required the complainant to submit to urine testing even though the complainant has a prescription and a court ruling allowing him to use marijuana for medicinal purposes.

Finding: Action Justified

Rationale: Following an evidentiary hearing on revocation of the complainants' probation, in which he was represented by counsel, the court limited the complainant's use of marijuana and ordered the Probation Department to monitor his marijuana use and continue drug testing. Probation Officer 1's actions to carry out the court's orders were lawful, justified, and proper.



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